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## “Smiling Discrimination” in Canadian Society

### Abstract

*The article ““Smiling Discrimination” in the Canadian Society” deals with a recent negative social phenomenon, describing a form of treating people on the basis of a category which might often result in violating their civil and human rights. The analysis focuses on “smiling discrimination” toward visible minorities and immigrants.*

### Résumé

*L'article ““Smiling Discrimination” in the Canadian Society” traite d'un problème social récent en décrivant les formes légales de traiter les gens sur la base de leur appartenance sociale qui peuvent souvent mener au non-respect de leurs droits civils et des droits de l'homme. L'analyse porte sur la “discrimination souriante” des minorités et des immigrants.*

Discrimination, a seemingly unambiguous word in the civil rights era, has undergone in the post-civil rights era an interesting change of concept and manifestations. Images of the neo-Nazis or Ku-Klux-Klan are no longer the most immediate associations for the term discrimination as it has mutated into less obvious, subtle, and therefore more dangerous forms, including housing and job discrimination, promotion restrictions or greater law enforcement surveillance of visible minorities. These concealed forms of discrimination, however, do not match with the traditional definition of discrimination because their racial motivation is often hidden behind socially acceptable explanations. As a result, “hidden discrimination”, “modern discrimination” or “smiling face” discrimination, as some experts suggest calling it, is more difficult to identify and prevent. In this study, we will look into the term “smiling discrimination”, its manifestations in the multicultural environment of the Canadian society and the precautions Canada is taking in order to protect minorities.

Sociologist M. Codjoe, in his essay entitled *Can Blacks be Racist?* (2001), suggests the term “smiling racism” and understands it in accordance with Scheurich and Young’s definition as “the covert type [when] persons making covert, racially biased decisions do not explicitly broadcast their intentions; instead, they veil them or provide reasons that society will find more palatable.” (Scheurich – Young, 1997, 5).

However, the very best way to understand “smiling discrimination” is through a model case study. Smiling discrimination can be easily observed through the use of Thomas King’s autobiographical narrative essay *The Open Car* (1999). The

story relates the experience of a white Canadian couple traveling to the USA. The couple is accidentally carrying fruit which they were not able to eat before reaching the border control station. In spite of actually having committed a minor offense, they do not seem to have any problems with the border guard, who only asks routine questions:

“Citizenship?”

“Canadian.”

“Where are you going?”

“New York”

“New York”

The narrator then comments on the light banter which the customs officer ensued in as he left the couple: “The guard smiled at Helen as if she has just told him she thought he looked spiffy in his uniform and then he tipped his hat, just the way the sheriff always did in the Westerns I saw as a kid. [...] “Have a nice day,”” he said. (King, 1999, 62). The very same friendly scene was repeated with other travelers. However, this was not the case of a young, Caribbean looking youth, sitting in the same car:

One of the guards began asking the man a series of questions – where he was from, where he was going, how long he was going to stay. And more questions. Did he have any cigarettes. Any liquor. Any drugs. How much money he was carrying. The guard asked the man about marijuana several times, each time hooking his lips around his fingers and sucking on an imaginary joint with practiced ease to demonstrate exactly what they were looking for.

[...] “Get your bags and identification”, the guard told the man, “and see immigration in the open car” (King, 1999, 61-62).

This scene demonstrates clearly the essence of “smiling discrimination”, which can be summarized in four maxims: (1) unfounded different and (usually worse) treatment, (2) multiple interpretations of the situation, (3) socially acceptable reasons for one’s actions and (4) the consequent absence of the legal punishment.

#### (1) Unfounded different (usually worse) treatment

A common feature of smiling discrimination is baseless, usually worse treatment, that can include singling out and making the target subject to extensive questioning or search. The reason, however, for selecting a person is not grounded in their obvious dangerousness but on their appearance or skin-color. The guards in the sample case study were authorized to search any or all the passengers or subject them to more detailed interrogation. However, they singled out a person they believed would be more likely to be an intruder. They did not even have to explain why a calm Caribbean youth seemed more suspicious to them than a white Canadian lady locking her feet around a bag. Clearly, they were making assumptions based on the correlation between high rate of drug-connected crime and certain minorities.

The “worse treatment”, in this case, was a minor inconvenience (a search, answering more questions than others), not a grand case of violating one’s rights. However, if a discriminatory attitude lacks an obvious objective reason, occurs repeatedly and is accompanying by humiliating gestures (imitation of smoking marihuana, drug-pusher’s jargon or even the lack of a polite form when requesting the person to move) such an attitude will certainly negatively influence one’s views of the racial attitudes in the society at large.

## (2) Multiple interpretations of the situation

Another common feature of “smiling discrimination” is its ambiguity, resulting in potential multiple interpretations of allegedly discriminatory behavior. The sample situation was observed and narrated from the perspective of the white Canadian couple, and the reader clearly understands they did not approve of the custom officer’s attitude and behavior. However, discrimination, as the old saying goes, might be in the eye of the beholder, and a different observer might understand this situation as a routine border-check and not a discriminatory behavior. According to many studies, the awareness of discrimination varies according to age, background and gender. Derek Wilkinson, for example, in his study, *Responding to Discrimination: Influences of Respondent Gender, Target Race and Target Gender* (2000), notes that interpretation of a discriminatory situation correlates to one’s gender (Canadian women manifest less prejudice and are also treated with greater tolerance in many social situations) or race (visible minority members showed less prejudice) while educational background plays little or no role in affecting one’s tolerance of discrimination.<sup>1</sup> Thus, the interpretation of “smiling discrimination” is in many cases very subjective, and that is perhaps the reason why many accuse minority persons of oversensitivity and over interpretation. Moreover, people who have never been exposed to “smiling discrimination” will probably fail to understand that visible minorities go through more than one such situation in their lives: These include relatively trivial hassles, such as being seated or served last in restaurants, double verifying of credit cards or larger bills, obvious pointing out of the price of more expensive goods; or much more serious underestimating of the value of one’s property, education or experience.

## (3) Socially acceptable reasons for smiling discrimination

The third characteristic feature of “smiling discrimination” is its seeming fairness and objectivity. Some hold the opinion that subtle discrimination is not really discrimination as racial profiling is based on the high crime rates involving people of color, and thus, grater law enforcement is justifiable and actually logical. This approach translates into more frequent police searches in low class or multicultural neighborhoods, or more frequent stopping and carding of drivers of color. The attitude seems to be, “Why should we fish in a lake when we can fish in a bucket?” The guards in the sample case study did not break any law or surpass their authority. They based their selection on the statistical probability of the Caribbean-looking youth being a drug-crime offender.

An expert in Canadian criminal law and a researcher at the University of Toronto, W. Scot, however, points out the inaccuracy of such statistics, which, as he states, are “more a reflection of police activity than actual criminal behavior”.<sup>2</sup> As the police focus their surveillance on crimes that take place in poor neighborhoods, they are more likely to detect and arrest offenders from this type of background. Scot further notes that another issue that may negatively affect the crime-rate statistics is the racial distinction of the offender, which is often based on skin-color and completely ignores ethnicity (Ibid.). As a result, the greater law enforcement is almost always based on inaccurate data and stereotypical assumptions.

#### (4) Absence of the legal punishment of “smiling discrimination”

While it is relatively easy to penalize open forms of discriminatory behaviour by fines or even imprisonment, smiling discrimination is difficult to prove and punish. The young Caribbean in the case study was treated “differently, on the basis of a category” and “worse than others” which corresponds with the definition of discrimination according to most modern dictionaries, and thus, he actually was discriminated against, even though none of his human or civil rights were violated. Nevertheless, many outside observers would probably hesitate to consider this situation as a form of discrimination. Indeed, due to the ambiguity of interpretation, very few if any charges were pressed in these cases in Canada.

#### **Smiling discrimination in present-day Canada**

Many experts point out that Canada is one of the most attractive countries for immigrants in the world. “It is wealthy in resources, rich in talent, secure in strong democratic traditions, renowned as a peacekeeper and prized as a land of opportunity for prospective immigrants,” writes C. Lewitt in his article *The Morality of Race in Canada*.<sup>3</sup>

As a result, there has been massive immigration to Canada, resulting in its status as a true multicultural and multiethnic society. Canada, according to the 2001 census, has a total immigrant population of 5,448,480. The biggest immigrant populations are those from eastern Asia (730,6000); Southern Europe (715,370); southern Asia (503,895); south-east Asia (469,105); and West-central Asia and the Middle East (285,585), but they also come from Central and South America (304,650); the Caribbean and Bermuda (294,050), and Africa (282,600). The immigrant population from the United Kingdom represents 606,000 immigrants; however, most of them came prior to the 1980's.<sup>4</sup>

One of the reasons for the popularity of Canada as a destination for immigrants certainly is that, “compared to the USA, committed to the assimilationist approach, Canada, for those groups of European origin, has traditionally been more tolerant of the continued expression of cultural differences among diverse groups” (Marger, 456). Moreover, the Canadian Human Rights Act protects anyone living in Canada against discrimination. Under the Canadian Human Rights Act, “...it is against the law for any employer or provider of a service that falls within federal jurisdiction to discriminate on the basis of race, nationality or ethnic origin, color, religion, age, sex (including pregnancy or childbearing),

sexual orientation, marital status, family status, physical or mental disability (including dependence on alcohol and drugs) and pardoned criminal conviction".<sup>5</sup> Most importantly, the Canadian attitude to minorities promises an optimistic future. According to the Ethnic Diversity Survey, conducted in 2002, the vast majority of Canadians (86%) aged 15 years and older (about 19 million), said they had not experienced discrimination or unfair treatment in Canada because of their ethno-cultural background during the previous five years (18). In spite of that, there still exists a number of Canadians who are still exposed to discrimination in Canada, ranging from minor to more severe cases.<sup>6</sup>

According to the Ethnic Diversity Survey, both visible and invisible minorities still encountered some forms of discrimination: "About 20% of visible minorities or 587,000 people, said they had sometimes or often experienced discrimination or unfair treatment during the previous five years because of their ethnicity, culture, race, color, language, accent or religion. An additional 15% of visible minorities reported such treatment occurring rarely (18).

The above-mentioned survey does not distinguish between direct and indirect discrimination and to our knowledge, no such reliable research has been conducted. However, there exists a relatively high number of partial studies, analyzing the occurrence of "smiling discrimination" among various minorities. For example, a study conducted in 2002 among a group of Vietnamese-Canadian youth showed that "smiling discrimination" occurs at schools, even in ESL classes. A student pointed out the unequal treatment she said she received when she needed assistance:

They really put more efforts in helping the white students. It happened to me just yesterday, when I sought help for my math homework. I sat there and waited for the assistant for one hour. I received two minutes while white students received more time and attention. There were two Asian students and three white students. Each white student received more than 15 minutes help. After that, the tutors went around to the white students and asked if they had any more questions. It's quite obvious, quite blatant. (Phan, 561)

Another study, carried out among South-Asian refugees regarding their perceptions of racial discrimination in Canada revealed that as many as 39% felt they were subject to subtle discrimination, including being looked down upon, unfair treatment, rudeness, resentment and insulting remarks. This percentage is substantially higher than the percentage of those who suffered overt discrimination (9.75%) and discrimination against community (16.8%) and indicates that subtle discrimination might be the most prevalent form of modern discrimination.<sup>7</sup>

Another frequent form of hidden discrimination occurs in the field of housing and real estate. Even though no objective statistics have been found, several interesting case studies prove that housing discrimination is an issue in present-day Canada. For example, in 2005, in Ontario, a NIMBY (Not-In-Our-Back-Yard) initiative started many heated discussions. NIMBY is opposition to new

affordable housing for Ontarians with disabilities (including mental illness, developmental disabilities and Alzheimer's disease), families on social assistance, newcomers to Canada, Native and Metis people, ex-offenders and youth (4). However, as a 2002 study proves, non-market housing has no negative effect on the selling price of quality of living of the nearby homes.<sup>8</sup>

Some other examples of housing discrimination are mentioned by Sean Best, a young, African-Canadian, who, in his article entitled *Would I Toss a Brick Through a Window?* published in *The Globe Mail* after race rioting that took place in Toronto in the spring of 1992, mentions several issues of what he calls "subtle, aversive racism" (Best, 1994, 53). Among these are difficulties in finding and renting accommodation, or selling such for a price equal to the price for a non-minority owned one. Some of his humorous, yet bitter memories include hiding with his wife in their garage while the real estate agent was showing their place to prospective buyers in order to get the same price for the house as other owners.

There are many situations in which smiling discrimination makes the lives of people of color difficult. However, the one that stands out is greater law enforcement surveillance: Many visible minorities report being subject to racial profiling. W. Scot and J. Tanner, define racial profiling as the situation when "racial differences in law enforcement surveillance activities cannot be totally explained by racial differences in criminal activity, traffic violations, calls for service or other legally relevant variables" (Scot – Tanner, 584). In their research, conducted on college and university students, they noticed the correlation between the frequency of law enforcement among the students of color and their respective participation in outdoor or public space activities, such as partying, "hanging out" or riding in cars with friends (591). As the authors point out, an alarming number of students not involved in any prior criminal activities were stopped by the police two or more times and were subjects to questioning and searches (589):

	Black (%)	White (%)	Asian (%)	South Asian (%)	West Asian (%)	Hispanic (%)	Other (%)
Not stopped	35.4	58.7	74.0	76.5	69.0	58.6	54.8
Stopped once	13.5	18.5	15.0	15.8	17.8	15.9	18.6
Stopped two or more times	51.1	22.7	10.9	7.7	13.2	25.5	26.6
Sample size	474	1,289	605	405	129	145	263

Another example of subtle discrimination, connected with the criminal justice system in Canada was mentioned by Scot in his research article *Northern Taboo: Research on Race, Crime and Criminal Justice in Canada*. He noticed white defendants are more likely to be approved for bail than black ones and sometimes receive shorter sentences upon conviction (Scot, 263).

## **Smiling discrimination – what can we do against it?**

All the examples mentioned by Sean Best are obvious examples of “different or even worse treatment” and, thus represent manifestations of discriminatory behavior. What is more, they are far more dangerous than the “old-fashioned” discrimination because each of them is committed with a smile on one’s face, and, what is worse; in most cases such behaviour is perfectly legal. Does it mean, however, that certain variants of discrimination will continue to be tolerated in Canada? In that case, can anything be done in order to prevent it? I believe two steps should be carried out immediately in order to prevent smiling discrimination: (1) name the enemy; (2) enact laws protecting minorities.

### **(1) Name the enemy**

Various terms used to describe “smiling discrimination” indicate the lack of a single, easy to understand the term, which serves as an umbrella for all possible form of concealed discrimination. That is perhaps why several sociologists and anthropologists have tried to coin a term that would capture the nature of this negative phenomenon. These terms include “smiling racism”, “quiet racism” (Scheurich, Younge, Codjoe), “color-blind racism” (Bonilla-Da Silva, 14), or “modern racism” (Waller, 120), as opposed to old-fashioned racism (Waller, 120). I believe the term that best reflects the nature of this phenomenon is “smiling face” discrimination as it the best describes its tricky nature. The coining of such a term and its legal recognition would undoubtedly be a giant leap toward eliminating the phenomenon in the society.

### **(2) Laws protecting minorities against “smiling face” discrimination**

As for laws preventing discrimination, Canada serves as an example for many other countries. As early as in 1971, the federal government, lead by Prime Minister Trudeau, announced a policy of “multiculturalism within a bilingual framework” (Marger, 488). In 1977, it declared its commitment to a multicultural policy and a rejection of “explicit racism” (Marger, 482). An even stronger commitment to the policy was made in 1988 when Canada became the first country to enact a multicultural law (Marger, 488).

As for specific laws protecting people against “smiling discrimination” in the field of fair housing, action has been taken to adopt a similar fair-housing policy as the USA has. The US Fair Housing Act, Title VIII of the Civil Rights Act, outlawed any form of housing discrimination on the basis of race, gender, origin or ethnicity, religion, handicap or family status. Moreover, based on the American model, the Ontarian Human Rights Code protects its citizens in fifteen areas, including sexual orientation and HIV/AIDS disease [8].

However, more laws need to be enacted in order to prevent subtle racism or “smiling discrimination”.

To sum up, “smiling discrimination” represents a dangerous modern type of discrimination which, in Canadian society, mostly affects visible minorities. However, Canada seems to be well aware of this negative modern phenomenon,

which stems mostly from prejudice, stereotyping and a lack of critical thinking. Therefore, observers of the Canadian multicultural experiment can be cautiously optimistic in their observation – no society may be entirely racism-free, but strong laws and an awareness of problems connected with indirect discrimination will certainly help to regulate this phenomenon and protect minorities. For it is the treatment of the powerless and not the powerful that is a sign of a developed and civilized society.

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